



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: MOP-171727

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 25, 2016, under Wis. Stat., §49.45(5), to review a decision by the Dane County Dept. of Human Services to recover Medical Assistance (MA), a hearing was held on July 20, 2016, by telephone. The hearing was a rehearing granted by the Division of Hearings and Appeals on June 20, 2016.

The issue for determination is whether the appeal of an MA overpayment was made timely.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: [REDACTED]  
Dane County Dept. of Human Services  
1819 Aberg Avenue  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**  
Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. Petitioner requested MA for her and her husband in September, 2014 soon after unemployment compensation ended. On September 15, 2014 the county sent a notice telling them about their

BadgerCare Plus (BC+) MA eligibility, and that they needed to report if monthly household income rose above \$1,310.83.

3. Household income rose above \$1,310.83 in November, 2014. The couple did not report the increase to the county agency. It remained above that level thereafter.
4. The BC+ remained open through April, 2015. MA continued to pay HMO capitation payments for those months.
5. By a notice dated December 4, 2015 the county informed petitioner that she was overpaid \$1,655 in MA from January 1 through April 30, 2015, claim no. [REDACTED].

### **DISCUSSION**

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the department's BC+ Handbook, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

An overpayment is determined as follows: "If the case was ineligible for BC+, recover the amount of medical claims paid by the state and/or the capitation rate. Use the ForwardHealth interChange data from the Total Benefits Paid by Medicaid Report(s). Deduct any amount paid in premiums (for each month in which an overpayment occurred) from the overpayment amount." Handbook, App. 28.4.2.

As of April 1, 2014 all childless adults were eligible for BC+ but with the income limit reduced to 100% of the FPL, which, for a two-person household, is \$1,310.83. See Wis. Stat., §49.471(4)(a)4.b for the new law, and the MA Handbook, Appendix 50.1 for the limit.

Petitioner and her husband testified that the HMO they were in for BC+ was the same as the one they were put into when their employment insurance started in January. They assumed that the insurance HMO would know to end the BC+ HMO coverage. Unfortunately that did not happen. I suspect that while Unity Health Plan might have been the same HMO, the private insurance HMO and the BC+ HMO likely are different sub-entities within the larger organization. In the end, the primary reason that petitioner continued to receive BC+ coverage is that she failed to report to the BC+ agency that income increased.

While reviewing the record for this decision I discovered an additional, more important reason why I must uphold the overpayment here. The notice informing petitioner of the overpayment was issued December 4, 2015 to petitioner's current mailing address. It told petitioner that if she disagreed she could appeal to the Division of Hearings and Appeals within 45 days, and it specified the final day for appeal to be January 18, 2016. The notice thus followed the appeal statute, Wis. Stat., §49.45(5), which requires appeals of negative MA actions to be filed within 45 days. Petitioner's appeal was filed January 25, 2016, 52 days after the overpayment notice.

Unfortunately the untimeliness was not discovered until after a rehearing request was granted and the hearing was held. However, timeliness jurisdiction cannot be waived by the Division of Hearings and Appeals or by the county agency. I therefore must uphold the overpayment for the primary reason that petitioner's appeal was filed untimely.

### **CONCLUSIONS OF LAW**

Petitioner's appeal of an MA overpayment claim was filed untimely.

**THEREFORE, it is** **ORDERED**

That the petition for review is hereby dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 25th day of July, 2016

\s \_\_\_\_\_  
Brian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on July 25, 2016.

Dane Cty. Dept. of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability